

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ATASCADERO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015041074

ORDER GRANTING REQUEST FOR
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
HEARING DATES

On June 2, 2015, Atascadero Unified School District filed a motion to continue the hearing based upon the unavailability of counsel on the scheduled hearing date, June 16, 2015. Atascadero's attorney, Ms. Sarah Garcia, has a previously scheduled and continued administrative hearing in Office of Administrative Hearings case number 2015021052, scheduled for hearing June 15-17, 2015.

On June 3, 2015, Student filed a response to the motion to continue. Student makes several allegations in his response, including that Student's attorney, Mr. Daniel Shaw, communicated with the student's attorney of record in case number 2015021052 and was told that it was "doubtful" that the hearing would be going forward on the June 15-17. Student then notes that he is not opposed the continuance but wants OAH to order the parties to meet and confer as to dates.

On June 3, 2015, Atascadero filed a reply to Student's response with attached emails purporting to confirm that neither the student's attorney in case number 2015021052 nor her supervising attorney spoke with or communicated with Mr. Shaw in regards to the status of that case. Finally, On June 4, 2015, Student sent in another letter and attached an email from the student's supervising attorney in OAH case number 2015021052 which says that it was "doubtful" that the hearing would go forward.

Neither party requested any particular length of continuance or proposed any dates for hearing. This matter has not been previously continued.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the

interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Atascadero has shown good cause for a short continuance in this matter. Mr. Shaw, who did not oppose the motion to continue, nevertheless, raised needless arguments against the continuance. Further, instead of contacting opposing counsel to see if dates for hearing could be agreed upon, he sent in a response condemning her for doing the same. To be thorough, Student's argument will be addressed. Even though there is an email from the opposing counsel's attorney suggesting that it is "doubtful" that the other hearing will move forward, there has been no settlement and the case is still on calendar. OAH case number 2015021052 was filed before this case and has already been continued. The case is scheduled to start in less than two weeks. The fact that an attorney, who is not the actual attorney involved in the case, thinks the case may settle is not determinative of settlement.

Finally, OAH will not grant a continuance without setting new dates. The parties in this matter have both chosen to ask that this matter be continued without suggesting continued dates for this matter to be calendared. Therefore, OAH will choose the dates. The attorneys inability to work together to propose dates or even to propose dates that only work for the one party, have put OAH in the position where dates will be assigned unilaterally.

The parties are cautioned against another request for continuance. The parties did not submit any declarations regarding unavailability for future dates in either the motion, response, or reply. Therefore, any future request for continuance must show good cause that arose after the date of this order that could not have been anticipated when the parties failed to specify that any hearing dates were problematic because of party, witness or attorney unavailability. The parties also failed to request that a mediation be set and one mediation has already been cancelled. No mediation will be set at this time, but the parties may request that a mediation date be set.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances.

The request is:

☒ Granted. The matter will be set as follows:

Prehearing Conference: June 26, 2015, at 1:00 p.m.

Due Process Hearing: July 7, 2015, at 9:30 a.m., July 8 and 9, 2015, at 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

DATE: June 4, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings